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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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DEC 17 2003

Federal Communications Commission
Office of the Secretary

In re:

SouthEast Telephone, Inc.

Petition of Waiver of Deadlines

In 47 C.F.R. § 54.809(c)

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CC Docket Nos. 96-45

WAIVER REQUEST - EXPEDITED ACTION REQUESTED

PETITION OF SOUTHEAST TELEPHONE, INC.
FOR WAIVER OF DEADLINES IN 47 C.F.R. § 54.809(c)

SouthEast Telephone, Inc. ("SET"), by its counsel and pursuant to Sections 1.3 and 1.925 of the Commission's rules,¹ hereby petitions the Commission for a waiver of the June 30, 2003, filing deadline for annual certification set forth in Section 54.809(c)² of the Commission's rules and requests that the Commission accept its September 30, 2003, data submission as timely.

SET is an Eligible Telecommunications Carrier ("ETC") in Kentucky and is eligible to receive rural high-cost universal service pursuant to Section 54.307 of the Commission's rules, which provides for support to competitive ETCs.³ As a prerequisite for receiving interstate access universal service support, Section 54.809 requires competitive ETCs to file an annual

¹See 47 C.F.R. § 1.3; 47 C.F.R. § 1.925.

²See 47 C.F.R. § 54.809(c).

³See 47 C.F.R. § 54.307(c)

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certification on June 30th of each year.⁴ As explained more fully below, SET received ETC status on September 17, 2002, and filed its line count information pursuant to § 54.802,⁵ on December 13, 2003.⁶ On January 24, 2003, the annual certification for interstate access support was submitted and pursuant to a communication with a USAC representative dated February 28, 2003, the information was submitted by fax a second time on the same date.⁷

SET received ETC status from the Kentucky Public Service Commission ("KPSC") on September 17, 2002. Under Section 54.809(c) in order to receive interstate access universal service support, SET was to file an annual certification on the date it first files its line count information and thereafter on June 30th of each year. A novice to the world of Universal Service Funding, SET filed its initial line count data on December 13, 2002, approximately three (3) months after receiving ETC status. SET subsequently sought direction from the USAC in February 2003 as to clarification of various filing requirements. On February 27, 2003, a USAC representative informed SET via an e-mail correspondence that the IAS reporting period for the March deadline was December 31, 2002.⁸ Relying upon the information received from USAC, and still new to the USF program, SET misinterpreted the filing deadlines for reporting periods and annual certifications and believed that the deadline for filing for annual certification was in fact December 31st of each year, and, subsequently, missed the June 30, 2003, deadline.

⁴See 47 C.F.R. § 54.809(c).

⁵See 47 C.F.R. § 54.802.

⁶A copy of the line count information submitted on 1/24/03 and again on 2/28/03 is attached hereto as Attachment 1.

⁷A copy of the 2/28/03 e-mail correspondence is attached hereto as Attachment 2.

⁸A copy of the 2/27/03 e-mail correspondence is attached hereto as Attachment 3.

Therefore, SET respectfully seeks a waiver of the June 30th deadline in Section 54.809 to allow USAC to accept data submissions at dates later than provided for under Section 54.809(c) of the Commission's rules. As set forth below, waiver of the relevant provision of Section 54.809 so that SET can continue to receive interstate access universal service support would be consistent with the Commission's well established pro-competitive and competitively neutral universal service policies. A waiver would also serve the public interest in that interstate access universal support aids SET in providing low cost telephone service to economically disadvantaged people of rural Kentucky.⁹

⁹Under the Commission's rules, there is no filing fee associated with this request. *See* C.F.R. § 1.1105.

BACKGROUND

SET is a telecommunications company serving customers in the rural areas of Kentucky. On September 17, 2002, SET was granted ETC status by the Kentucky Public Service Commission enabling SET to receive high-cost support in certain rural areas in Kentucky. Shortly thereafter, on October 23, 2002, SET forwarded a copy of the Public Service Commission order to USAC .

On December 13, 2002, SET submitted to USAC line count data for the periods ending June 2002 and September 2002. On the same date, SET also voiced by correspondence the corporation's "inexperience" with the USF program left uncertainty on the part of SET. Two months later, on February 27, 2003, SET, via an e-mail correspondence to an USAC representative, inquired about specific data submission deadlines and addresses for submissions.¹⁰ In the reply e-mail, the USAC representative addressed the data submission requirements and also the IAS reporting period for the March 2003 deadline.¹¹ However, the e-mail did not contain information about the IAS annual certification required pursuant to Section 54.809(c).¹²

SET became aware that the June 30, 2003, deadline had been missed in late September while drafting standard operating procedures (SOPs) for handling of USF data submissions and filing deadlines. SET immediately contacted USAC about the missed deadline and the contributing factors that led to the deadline being missed. SET was informed that a waiver

¹⁰See Attachment 8.

¹¹*Id.*

¹²See 47 C.F.R. § 54.809(c).

would be required of the filing deadline to allow USAC to accept "late" submissions and to allow SET to continue receiving interstate access universal service support. SET notes that on September 30, 2003, it submitted the Annual Certification Filing that had been due on June 30, 2003. Absent a waiver of the Commission's deadlines, SET will no longer receive interstate access universal service support, which will adversely affect the Company's ability to serve the public in the manner intended by the funding initiative.

The Commission has repeatedly recognized that designation of competitive ETCs promotes competition ultimately benefitting consumers in rural and high cost areas.¹³ Failing to grant SET's waiver will result in the ETC's loss of interstate access universal support which is not in the public interest for the consumers in the rural and high cost areas served by SET.

REQUEST FOR WAIVER

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section of 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

¹³*Western Wireless Corporation Petition for Designation as Eligible Telecommunications Carrier In the State of Wyoming; Federal-State Joint Board on Universal Service, Memorandum Opinion and Order, CC Docket No. 96-45, 12 FCC Rcd 48 (2000); Western Wireless Corporation Petition for Designation of Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota; Federal-State Joint Board on Universal Service, Memorandum and Order, CC Docket No. 96-45, FCC 01-283 (rel. October 5, 2001).*

- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴

Federal courts also have recognized that “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.”¹⁵ The Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”¹⁶

As explained above, denial of SET’s waiver would be inconsistent with and frustrate the underlying purposes of the Commission’s rules. Strict application of the Section 54.809 deadlines in this case is inconsistent with public interest.

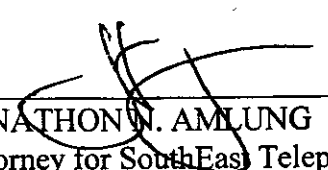
For the reasons stated herein, SET submits that granting a waiver of the filing deadlines in Section 54.809(c) of the rules to allow it to continue to receive interstate access universal support is appropriate, consistent with the Commission’s statutory goal of preserving and advancing universal service, and will advance the public interest. In light of the economic disadvantages faced by rural competitive local exchange carriers, it is critical that SET be allowed to continue to receive interstate access universal support in order to remain competitive with the incumbent carriers within its area.

¹⁴See 47 C.F.R. § 1.925(b)(3).

¹⁵*Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d. 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. F.C.C.*, 418 F.2d. 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹⁶*Northeast Cellular Telephone Co.*, 897 F.2d. at 1166 (citing *WAIT Radio* 418 F.2d at 1159).

Respectfully submitted,



JONATHON W. AMLUNG
Attorney for South East Telephone, Inc.
1000 Republic Building
429 W. Muhammad Ali Blvd.
Louisville, Kentucky 40202
Telephone: (502) 587-6838
Facsimile: (502) 584-0439